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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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10 Elijah Muhammad,) No. CV-08-369-PHX-DGC
11 Plaintiff,) **ORDER**
12 vs.)
13 Jessie Jackson, et al.,)
14 Defendants.)
15 _____)

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17 Plaintiff Elijah Muhammad commenced this action by filing a pro se complaint on
18 February 26, 2008. Dkt. #1. Plaintiff has filed a motion to proceed in forma pauperis and
19 a motion for injunctive relief. Dkt. ##3-4. The Court will dismiss the complaint without
20 prejudice and deny the motions as moot.

21 **I. Dismissal of the Complaint.**

22 “[A] federal court may dismiss *sua sponte* if jurisdiction is lacking.” *Fiedler v. Clark*,
23 714 F.2d 77, 78 (9th Cir. 1983) (citing *Mansfield, Coldwater & Lake Mich. R.y. Co. v. Swan*,
24 111 U.S. 379, 382 (1884)); *see Franklin v. Or. State Welfare Div.*, 662 F.2d 1337, 1342 (9th
25 Cir. 1981) (same). “While a party is entitled to notice and an opportunity to respond when
26 a court contemplates dismissing a claim on the merits, it is not so when the dismissal is for
27 lack of subject matter jurisdiction.” *Scholastic Entm’t, Inc. v. Fox Entm’t Group, Inc.*, 336
28 F.3d 982, 985 (9th Cir. 2003) (citations omitted); *see Fed. R. Civ. P. 12(h)(3)* (“Whenever

1 it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the
2 subject matter, the court shall dismiss the action.”).

3 “Federal courts are courts of limited jurisdiction. They possess only that power
4 authorized by Constitution and statute[.]” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511
5 U.S. 375, 377 (1994). Pursuant to federal statutes, this Court has subject matter jurisdiction
6 over a case only if the complaint alleges a federal cause of action or the amount in
7 controversy exceeds \$75,000 and the parties are citizens of different states. *See* 28 U.S.C.
8 §§ 1331, 1332(a).

9 Plaintiffs must provide a statement of the grounds for the Court’s subject matter
10 jurisdiction. *See* Fed. R. Civ. P. 8(a) (“A pleading . . . shall contain (1) a short and plain
11 statement of the grounds upon which the court’s jurisdiction depends[.]”). Plaintiff’s one-
12 page complaint contains no factual allegations, no explanation of his claim, and no statement
13 of the basis for jurisdiction. Dkt. #1. The complaint asserts that Defendants have violated
14 the Fourth, Fifth, Sixth, and Eighth Amendments, Dkt. #1 at 1, but this bare statement is not
15 sufficient to invoke the Court’s jurisdiction. Plaintiff “has no cause of action directly under
16 the United States Constitution.” *Azul-Pacifico Inc. v. City of L.A.*, 973 F.2d 704, 705 (9th
17 Cir. 1992). “[A] litigant complaining of a violation of a constitutional right must utilize 42
18 U.S.C. § 1983.” *Id.*; *see Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th
19 Cir. 2001). Plaintiff’s claims are not brought under § 1983 or any other federal statute. Nor
20 does the complaint assert that the parties are citizens of different states. *See* 28 U.S.C. §
21 1332(a). The Court accordingly will dismiss the complaint for lack of subject matter
22 jurisdiction. *See* Fed. R. Civ. P. 12(h)(3); *Franklin*, 662 F.2d at 1343 (affirming *sua sponte*
23 dismissal of claims that did not state a federal cause of action); *Kokkonen*, 511 U.S. at 377
24 (courts must presume lack of jurisdiction until the plaintiff proves otherwise).

25 Plaintiff’s motion for injunctive relief is also insufficient to invoke this Court’s
26 jurisdiction. The motion consists of a California state court form used to obtain restraining
27 orders against domestic violence. The motion cites no federal law or claim.
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II. Leave to Amend the Complaint.

“A pro se litigant must be given leave to amend his or her complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). In this case, Plaintiff could cure the jurisdictional defect by asserting claims under 42 U.S.C. § 1983. The Court will dismiss the complaint without prejudice and allow Plaintiff to file an amended complaint that properly invokes this Court’s jurisdiction. Plaintiff shall have until **Friday, April 25, 2008** to file an amended complaint.

III. Plaintiff’s Obligations.

Plaintiff must become familiar with, and follow, the Federal Rules of Civil Procedure and the Rules of the United States District Court for the District of Arizona (“Local Rules”), which may be obtained in the Clerk of Court’s office. For purposes of the amended complaint, Plaintiff is directed to Rule 8 of the Federal Rules of Civil Procedure. Rule 8(a) provides that a complaint “shall contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction depends, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.” Fed. R. Civ. P. 8(a). These pleading requirements shall be set forth in separate and discrete paragraphs. Rule 8(e) provides that each such paragraph “shall be simple, concise, and direct.” Fed. R. Civ. P. 8(e)(1). The forms contained in the Appendix to the Federal Rules of Civil Procedure – which include forms regarding jurisdictional statements and sample complaints on various causes of action – “are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.” Fed. R. Civ. P. 84.

Plaintiff is advised that vague references to violations of his constitutional rights are insufficient to satisfy even the liberal notice pleading requirements of Rule 8. The amended complaint must give Defendants fair notice of what Plaintiff’s claims are and the grounds upon which they are based. *See Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005). This includes some factual basis for the claims and the specific legal theory supporting each claim.

1 *See id.*; Fed. R. Civ. P. 8(a)(2). The amended complaint must also provide a clear statement
2 of this Court's jurisdiction and the relief Plaintiff seeks. *See* Fed. R. Civ. P. 8(a)(1), (3).

3 Plaintiff is further advised that if he fails to prosecute this action or comply with the
4 rules or any Court order, the Court may dismiss the action with prejudice pursuant to
5 Rule 41(b). *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir.1992).

6 **IV. Plaintiff's Motion to Proceed In Forma Pauperis.**

7 Because the complaint will be dismissed for lack of jurisdiction, the Court will deny
8 as moot Plaintiff's motion to proceed in forma pauperis. Plaintiff may file another motion
9 to proceed in forma pauperis if he decides to file an amended complaint as permitted by this
10 order. Plaintiff is advised that his supporting financial affidavit must be complete.

11 **IT IS ORDERED:**

- 12 1. Plaintiff's complaint (Dkt. #1) is **dismissed** without prejudice for lack of
13 subject matter jurisdiction.
- 14 2. Plaintiff has until **April 25, 2008** to file an amended complaint. The Clerk
15 shall terminate this action without further notice if Plaintiff fails to comply
16 with this deadline
- 17 4. Plaintiff's motion to proceed in forma pauperis (Dkt. #3) and motion for
18 injunctive relief (Dkt. #4) are **denied** as moot.

19 DATED this 25th day of March, 2008.

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22 _____
23 David G. Campbell
24 United States District Judge
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